Gurcharan Singh a/l Bachittar Singh v Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S5-21-150-1994
JAMES FOONG J
25 SEPTEMBER 1996

Preventive Detention *— Extension order — Validity of — Extension order did not state grounds of detention — Whether order extending period of detention valid — Whether detainee denied right to make representation — Whether there was false imprisonment — Whether plaintiff was entitled to damages*

Pursuant to a detention order ('the initial detention order') issued by the Minister of Home Affairs dated 3 November 1987, the plaintiff was detained under the Internal Security Act 1960 ('the ISA 1960') for a period of two years commencing 3 November 1987. The reasons for the detention was stated in the initial detention order. On 31 October 1991, pursuant to powers granted to him under s 8(7) of the ISA 1960, the Deputy Minister of Home Affairs, by a written order ('the extension order'), extended the plaintiff's detention for another two years commencing 3 November 1991. This extension order listed no grounds for the plaintiff's extended detention. On 2 February 1993, the Deputy Minister of Home Affairs, pursuant to the powers conferred upon him under s 81(3) of the ISA 1960, ordered that the initial detention order and the extended order be cancelled with effect from 5 February 1993 (the cancellation order'). The plaintiff was released. The plaintiff alleged that he was unlawfully detained by the extension order as the order was invalid since it gave no grounds for his detention. He was therefore deprived of his rights to make representations to the advisory board under s 8(7) of the ISA 1960. On the basis that the extension order was invalid, the plaintiff alleged that he was falsely imprisoned from 31 October 1991 until 5 February 1993, that is the date of his release. The plaintiff now claimd damages and costs. Among the issues for consideration was whether there was a necessity for the Minister of Home Affairs or his deputy to furnish grounds and the allegations of fact on which the extension order was based.

Held, declaring that the extension order was null and void and awarding only nominal damages to the plaintiff:

(1) A detainee must be made aware of whether he can exercise his right to make representations. Before he can do so, it must be disclosed to him on what grounds he is further detained. The extension order therefore must list the grounds regardless of whether the grounds are the same as, different or partly different from those in the initial detention order (see pp 127H–128D); *Mohd Amin bin Mohd Yusoh v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1995] 1 CLJ 94 followed.

(2) Since the extension order did not state any grounds, the extension order was therefore invalid, rendering any detention of the plaintiff

thereunder unlawful (see p 129H); *Bhim Singh v State of J & K* AIR 1986 SC 494 and *Rudul Shah v State of Bihar* AIR 1983 SC 1086 followed.

(3) As there were no creditable defences raised by the defendants, the plaintiff therefore was falsely imprisoned from 31 October 1991 to 5 February 1993 (see p 132E–F).

(4) Only nominal damages was awarded to the plaintiff based on the following factors, namely (i) there was no mala fides on the part of the second defendant in executing the extension order; (ii) the extension order was done in good faith and the error, was at most, caused by an oversight; (iii) immediately upon realizing the error, the extension order was cancelled and the plaintiff was set at liberty; (iv) the grounds disclosed in the initial order was based on the fact that the plaintiff was selling the country's military secrets and attempting to recruit spies; and (v) the attitude of the plaintiff in turning against the government and claiming damages on a technical error was deplorable (see pp 133H–134A).

[Bahasa Malaysia summary

Menurut perintah penahanan ('perintah penahanan permulaan') yang diisukan oleh Menteri Hal-Ehwal Dalam Negeri bertarikh 3 November 1987, plaintif telah ditahan di bawah Akta Keselamatan Dalam Negeri 1960 ('AKDN 1960'). Sebab-sebab untuk penahanan tersebut dinyatakan dalam perintah penahanan permulaan tersebut. Pada 31 Oktober 1991, menurut kuasa yang diberikan kepadanya di bawah s 8(7) AKDN 1960, Timbalan Menteri Hal-Ehwal Dalam Negeri melalui perintah bertulis ('perintah lanjutan tersebut') telah menlanjutkan penahanan plaintif untuk dua tahun selanjutnya bermula 3 November 1991. Perintah lanjutan tersebut tidak menyenaraikan sebarang alasan untuk penahanan lanjutan plaintif tersebut. Pada 2 Februari 1993, Timbalan Menteri Hal-Ehwal Dalam Negeri, menurut kuasa yang diberikan kepadanya di bawah s 81(3) AKDN 1960, telah memerintahkan supaya perintah penahanan permulaan dan perintah lanjutan dibatalkan bermula 5 Februari 1993 ('perintah pembatalan tersebut'). Plaintif kemudiannya telah dibebaskan. Plaintif mendakwa bahawa dia telah ditahan secara tidak sah melalui perintah lanjutan tersebut oleh kerana perintah tersebut adalah tidak sah kerana ianya tidak menyatakan sebab-sebab untuk penahanannya. Maka dia telah dinafikan hak-haknya untuk membuat representasi kepada badan penasihat di bawah s 8(7) AKDN 1960. Atas dasar bahawa perintah lanjutan itu adalah tidak sah, maka plaintif telah mendakwa bahawa dia telah dipenjarakan secara salah dari 31 Oktober 1991 sehingga 5 Februari 1993, iaitu pada tarikh dia dibebaskan. Plaintif sekarang menuntut ganti rugi dan kos. Antara isu-isu untuk dipertimbangkan adalah sama ada perlu supaya Menteri Hal-Ehwal Dalam Negeri ataupun timbalannya memberikan alasan-alasan dan dakwaan fakta yang padanya perintah lanjutan tersebut didasarkan.

Diputuskan, membenarkan deklarasi bahawa perintah lanjutan tersebut adalah terbatal dan tak sah dan memberikan ganti rugi nominal sahaja kepada plaintif:

(1) Seseorang tahanan itu harus mengetahui sama ada dia mempunyai hak untuk membuat representasi. Sebelum dia boleh buat begitu, ianya harus diberitahu alasan-alasan atas mana dia telah ditahan. Maka perintah lanjutan tersebut harus menyenaraikan alasan-alasan, tidak kira sama ada alasan-alasan tersebut adalah sama dengan, berlainan ataupun sebahagiannya berlainan daripada alasan dalam perintah penahanan permulaan (lihat ms 127H–128D); *Mohd Amin bin Mohd Yusoh v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1995] 1 CLJ 94 diikut.

(2) Oleh kerana perintah lanjutan tersebut tidak menyatakan sebarang alasan, maka ianya adalah tidak sah. Maka penahanan plaintif adalah tidak sah (lihat ms 129H); *Bhim Singh v State of J & K* AIR 1986 SC 494 dan *Rudul Shah v State of Bihar* AIR 1983 SC 1086 diikut.

(3) Oleh kerana tidak ada pembelaan yang kukuh yang dibangkitkan oleh defendan, maka plaintif telah ditahan secara salah dari 31 Oktober 1991 sehingga 5 Februari 1993 (lihat ms 132E–F).

(4) Ganti rugi nominal telah diberikan kepada plaintif berdasarkan faktor-faktor berikut, iaitu (i) tidak ada mala fides pada pihak defendan kedua dalam melaksanakan perintah lanjutan tersebut; (ii) perintah lanjutan tersebut telah dilakukan secara bona fide dan kesilapannya adalah merupakan suatu kealpaan dan tidak lebih daripada itu; (iii) sebaik sahaja kesilapan itu disedari, perintah lanjutan tersebut telah dibatalkan dan plaintif dibebaskan; (iv) alasan-alasan yang dikemukakan dalam perintah permulaan adalah berdasarkan fakta bahawa plaintif telah membongkar rahsia tentera negara dan telah berusaha melatihkan pengintip; dan (v) perbuatan plaintif yang telah berpaling tadah terhadap kerajaan dan sekarang menuntut ganti rugi berdasarkan kesilapan teknikal adalah dikeji (lihat ms 133H–134A).]

Notes

For cases on the validity of the extension order in preventive detention, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1217–1220.

Cases referred to

Ansell v Thomas (1974) Crim LR 31 (refd)
Bhim Singh v State of J & K AIR 1986 SC 494 (folld)
Broome v Cassell & Co [1972] AC 1027 (folld)
E Gopal & Anor v Awang bin Mona [1978] 2 MLJ 251 (refd)
Mohd Amin bin Mohd Yusoh v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1995] 1 CLJ 94 (folld)
Rudul Sah v State of Bihar AIR 1983 SC 1086 (folld)
Tan Boon Liat @ Allen & Anor, Re [1977] 2 MLJ 108 (refd)

Tan Hoon Seng v Minister of Home Affairs, Malaysia & Anor [1990] MLJ 171 (refd) A
Zainuddin v Liew Pak Fun & Anor [1962] MLJ 247 (refd)

Legislation referred to

Federal Constitution arts 5, 9 10, 13, 149 B
Internal Security Act 1960 ss 8, 8B, 8C, 11
Karpal Singh (*Karpal Singh & Co*) for the plaintiff.
Al-Baishah bte Haji Abdul Manan (Senior Federal Counsel) for the defendants.

C
James Foong J: The plaintiff was detained under the Internal Security Act 1960 ('the ISA 1960') for a period of two years commencing 3 November 1987, pursuant to a detention order issued by the Minister of Home Affairs of Malaysia dated 3 November 1987 ('the initial detention order'). In this initial detention order, the reasons for his detention were stated therein. On 31 October 1991 the Deputy Minister of Home Affairs, D pursuant to the powers granted to him under s 8(7) of the ISA 1960, by a written order ('the extension order') extended the plaintiff's detention for another two years commencing 3 November 1991. This extension order listed no grounds for the plaintiff's extended detention. Then on 2 February 1993, the Deputy Minister of Home Affairs by powers conferred upon him under s 81(3) of the ISA 1960 ordered that the initial detention E order and the extension order be cancelled with effect from 5 February 1993 ('the cancellation order'). Thereupon the plaintiff was released.

The plaintiff now alleges that he was unlawfully detained by the extension order as this order was invalid since it stated no ground for his detention. By supplying no ground for his detention he was deprived of his F rights to make representations to the advisory board under s 8(7) to be read together with s 11 of the ISA 1960. The extension order being invalid, the plaintiff charges that he was falsely imprisoned from 31 October 1991 until 5 February 1993, ie the date of his release. For this he claims damages and costs.

G
The first defendant is in charge of the detention centre which detained the plaintiff, while the second defendant is the Deputy Minister of Home Affairs, Malaysia who executed the above stated orders relating to the plaintiff's detention and subsequent release. The third defendant is the Government of Malaysia whom the plaintiff claims is vicariously liable for the actions of the first and second defendants. H

The defendants' defence begins firstly by arguing that since the initial detention order was cancelled by the cancellation order, there is no extension order then existing for the plaintiff to base his claim. Secondly, they plead that the first and second defendants' actions were bona fide and the plaintiff's detention was in accordance with the law. Finally, in the I alternative, the defendants assert that the plaintiff's claim is wrong in law.

To begin with, s 8(1) of the ISA 1960 allows the Minister of Home Affairs to detain any person 'with a view to prevent him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or the economic life thereof'.

Under s 8(7) of the ISA, the period of detention of any person may be extended for a further period not exceeding two years, either:

(a) on the same grounds as those on which the order was originally made;

(b) on grounds different from those on which the order was originally made; or

(c) partly on the same grounds and partly on different grounds;

...

However there is a proviso to s 8(7) of the ISA 1960 which states that:

> ... if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under s 11 as if the order extended as aforesaid was a fresh order ... .

Section 11(1) of the ISA 1960 provides a detained person with the right to make representations against the detention to an advisory board. Under s 11(2) of the ISA 1960:

> For the purpose of enabling a person to make representations under sub-s (1) he shall, at any time of the service on him of the order:
>
> (a) be informed of his rights to make representations to an advisory board under sub-s (1); and
>
> (b) be furnished by the Minister with a statement in writing:
>
> (i) of the grounds on which the order is made;
>
> (ii) of the allegations of fact on which the order is based; and
>
> (iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the advisory board.

From these provisions, one can immediately identify the first issue in this case to be that of whether there is a necessity for the Minister of Home Affairs or his deputy, to furnish the grounds and the allegations of fact on which the extension order is based.

A number of authorities of the High Court of Malaya have decided on this issue and have given admirable grounds in their decisions with which this court wishes to associate.

The first is the case of *Mohd Amin bin Mohd Yusoh v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1995] 1 CLJ 94 where the extension order contained no grounds. In granting liberty to the detainee on a writ of habeas corpus, the learned judge had this to say at p 97:

> The defendant must be made to know the grounds of his detention so that he could decide whether he should exercise his inherent right under s 11 of the ISA 1960 by treating the second detention order as a fresh order and consequently make representations to the advisory board as envisaged under s 12(1) of the ISA 1960.

The learned judge then proceeded at p 97 to add that:

> Furthermore, the right of making representations to the advisory board would be rendered meaningless if the applicant was in no position to know the grounds on which the second detention order was made.

These sentiments are shared by another learned High Court judge in a series of habeas corpus applications, the first of which bears Criminal Application No 44–22–94, High Court at Penang. A similar situation existed here where the extension orders bore no grounds. T Selventhiranathan J has this to add:

> ... before the applicant can even consider whether he should make any representation to the advisory board in exercise of his rights under the proviso to s 8(7) and under s 11 of the ISA 1960, he has first to know what grounds the extension order was made. In the circumstances where he is not furnished with the statement of the grounds on which the extension order is made and of the alleged fact on which the extension order is based, it would render nugatory the rights specifically conferred upon him by those provisions of the ISA 1960 and, in my view, it would also amount to a breach of cl (1) of art 151 of the Constitution (Federal) which enjoins the determining authority to inform the detainee of the grounds for his detention and the allegation of the fact on which the detention order is based, and further gives him the right to make representations against the detention order to the advisory board.

Detention orders result in the restriction of the free movement of an individual which is guaranteed under art 5(1) of the Federal Constitution. For this, the principle of strict interpretation must be adopted by the courts on all laws promulgated effecting the detention of a person, and in the event of doubt, the interpretation should even lean in favour of the subject (see *Tan Hoon Seng v Minister of Home Affairs, Malaysia & Anor and another appeal* [1990] 1 MLJ 171). In this case, though the proviso under s 8(7) of the ISA only mentioned, 'if the detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under s 11,' to make representations to the advisory board, it is only logical and reasonable to conclude that the Minister must state his grounds in all extension orders. This is to enable the subject to decide whether he wishes to exercise his rights to make representations to the advisory board. When there is silence on the grounds of an extension order, as in this case, how could the detainee be in possession of knowledge whether to exercise his right. This tantamounts to a deprivation of his right as granted by the law. When this occurs, any extension order without disclosure of grounds becomes invalid and the detention thereunder will be unlawful.

Learned federal counsel for the defendants argued that if the grounds of detention for the extension order were similar to that of the initial detention order, there was no necessity for the minister to expressly state his grounds in the extension order. This contention finds no acceptance from this court. Applying the principle as stated above, a detainee must be made aware of whether he can exercise his rights to make representation. Before he can do so, it must be disclosed to him on what grounds he is further detained. Only if he is further detained on different grounds or partly on different grounds a right is granted to him to make representations to the advisory board. Therefore, to enable him to decide, the extension order must list the grounds, whether they are the same, different or partly different.

A In this case, as admitted by the defendants, the extension order states no grounds. Under such circumstances the extension is therefore invalid rendering any detention of the plaintiff thereunder unlawful.

Learned federal counsel then submitted that the situation was rectified by the cancellation order issued by the minister which cancelled both the B initial detention order and the extension order. Though such action did secure the earlier release of the plaintiff from detention on the stated (further two years in extension) order, it did not delete the fact that the extension order was unlawful. The cancellation order rendered it ineffective towards the plaintiff's continual detention under the extension order but did not eradicate the very fact that the plaintiff was physically detained C under an unlawful extension order for a substantial period. A cancellation order cannot, by a stroke of a pen, erase a wrong that had been inflicted upon the individual's liberty. It does not extinguish a detention that had transpired.

Where a detention order is issued not in accordance with the law, it D is defective and bad. In normal circumstances, the detainee is at liberty to be set free. However, in tort he can claim damages for false imprisonment. This, the plaintiff is pursuing for the period of the effective date stated in his extension order until the date of his release, ie from 3 November 1991 until 5 February 1993.

E Under common law, false imprisonment is a recognized cause of action which gives a person who was falsely imprisoned, a substantive right to make a claim against another who was responsible for unlawfully detaining him. It derives from the law of trespass to a person, where it is actionable without proof of actual damage (see *Clerk & Lindsell on Tort* (14th Ed) at p 363.

F False imprisonment has been defined as follows:

> ... intentionally but without lawful justification subject another to total restrain of movement either by actively causing his confinement or preventing him from exercising his privilege of leaving the place where he is (see Clayton & Tomlinson — *Civil Action Against the Police* (2nd Ed) at p 140)).

G From the facts of this case, there can be no denial that the plaintiff was confined to a detention camp where his freedom of movement was restrained by the defendants. This detention, not being in accordance with the law is therefore unlawful, and the plaintiff is entitled to claim from those responsible for his detention. This principle has also found acceptance in the Indian H Supreme Courts by the obiters expressed in *Rudul Sah v State of Bihar* AIR 1983 SC 1086 and *Bhim Singh v State of J & K* AIR 1986 SC 494.

The persons responsible for the plaintiff's false imprisonment are the first and second defendants who are or were at all material times servants and/or agents of the third defendants. In an action of this nature, the I defences available to the defendants are usually those of justification and/or those provided by statutory protection. As for justification, this court can find none since it has ruled that the extension order is invalid culminating in the plaintiff's detention being unlawful. As stated by Lee Hun Hoe CJ (Borneo) in *Re Tan Boon Liat @ Allen & Anor* [1977] 2 MLJ 108 at p 110:

> ... However distasteful and undesirable the character of the detenu may be, it is still the duty of the court to construe the law according to the accepted principles of interpretation.

As regards statutory defences, learned federal counsel in her subsequent additional written submission brought forth two defences under this category. The first relates to art 149(1) of the Federal Constitution which provides:

> If an Act of Parliament recites that action has been taken or threatened by any substantial body of person, whether inside or outside the Federation:
>
> (f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,
>
> any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any provisions of arts 5, 9, 10 or 13, or would apart from this article be outside the legislative power of Parliament; and art 79 shall apply to a bill of such an act or any amendment to such a bill.

Articles 5, 9, 10 and 13 deal with liberty of person, prohibition of banishment, freedom of movement, freedom of speech, assembly and association and right to property respectively.

Going by what federal counsel is submitting, the plaintiff's claim for damages which involves his personal liberty and freedom of movement as guaranteed in arts 5 and 9 of the Federal Constitution is not maintainable since his actions were prejudicial to public order and the security of the country. At this stage, for a better understanding of this case, it is necessary to disclose the grounds for the detention of the plaintiff under the initial detention order. He was accused of trading and receiving gratification therefrom on military secrets relating to our air defences to a neighbouring country.

Under art 149(1)(f) of the Federal Constitution, any Act of Parliament which could be inconsistent with arts 5, 9, 10 or 13 or would, apart from these articles be outside the legislative power of Parliament, is valid if it involves acts or threats that prejudice public order or the security of the country. The Act of Parliament which has relevance to this case is obviously the ISA 1960. Though the provisions of the ISA 1960 are inconsistent with arts 5 and 9 of the Federal Constitution, by virtue of art 149(1)(f) of the Federal Constitution, this piece of legislation is still valid. However, in this case no one is questioning the validity of the ISA 1960. The plaintiff did not challenge his detention under the initial detention order though it affected his rights guaranteed under arts 5 and 9 of the Federal Constitution. His grievance is towards the defendants for not complying with the provisions as laid down under the ISA 1960 itself. This has nothing to do with art 149(1)(f) of the Federal Constitution. The creation of ISA 1960 is valid though its provisions are inconsistent with other sections of the law affecting liberty and freedom of movement, but in this case, the provisions within the ISA 1960 itself have not been adhered to by the defendants. The detention of the plaintiff is valid under the ISA 1960 but, only if it is exercised or done within the ambit of the Act and not otherwise. In this case, since the provisions of the ISA 1960 have not been complied with,

A the continual detention of the plaintiff on the extended period remains unlawful.

The second statutory defence submitted relies on ss 8B and 8C of the ISA 1960. For the sake of clarity, this court hereby reproduces these provisions:

B Section 8B reads as follows:

Judicial review of act or decision of Yang di Pertuan Agong and Minister

(1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di Pertuan Agong or the Minister in the exercise of
C their discretionary power in accordance with this Act, save in regard to any question on the compliance with any procedural requirement in this Act governing such act or decision.

(2) The exception in regard to any question on compliance with any procedural requirement in sub-s (1) shall not apply where the grounds are described in s 8A.

D Section 8C of the ISA 1960 reads as follows:

Interpretation of 'judicial review'

In this Act, 'judicial review' includes proceedings instituted by way of:

E (a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;

(b) an application for a declaration or an injunction;

(c) a writ of *habeas corpus*; and

(d) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Yang di Pertuan Agong or
F the Minister in accordance with this Act.

It is based on s 8C of the ISA 1960 that learned federal counsel stresses that the plaintiff is prevented from bringing this action. This section as the heading indicates is only an interpretation provision on the phrase 'judicial review'. This phrase is used in s 8B of the ISA to prevent the courts from
G scrutinizing by way of judicial review, the decision of his Majesty, the Yang di Pertuan Agong or the minister in the exercise of their discretionary power under this Act except, 'in regard to any question on the compliance with any procedural requirement in this Act governing such act or decision.' By virtue of this clause, the courts are restricted to only examine whether
H the procedure as laid down under this Act is complied with by the authorities. Other than this, s 8C(d) of the ISA 1960 disallows any suit, action, or other legal proceedings to be entertained by the courts.

As one can observe throughout this entire case, the allegations of the plaintiff and the finding of this court are based on the relevant procedure of the ISA 1960 not being complied with by the honourable deputy
I minister in issuing the extension order. It has not enquired into the exercise of the discretionary power of the deputy minister in making his decision, nor the reasonableness of the decision. All that this court did was to ensure that the procedure as set out under the ISA 1960 was adhered to, which unfortunately was not. As the plaintiff's claim is based on the

non-compliance of procedure, s 8B of the ISA 1960 offers no statutory defence to the defendants. A

In a final attempt, learned federal counsel submitted that the honourable deputy minister acted without mala fides in extending the period of detention on the plaintiff. She relied on the case of *E Gopal & Anor v Awang bin Mona* [1978] 2 MLJ 251, and quoted a passage from that judgment which indicated that the minister in such cases must exercise his powers in a bona fide manner. Indeed, in cases where Parliament has granted powers to any authority to exercise its discretion in arriving at a decision, such discretion must be exercised bona fide, otherwise it can be declared unlawful. In this instance however, even if the honourable deputy minister acted bona fide but was wrong in procedure, it is still no defence to a claim for wrongful detention. A wrong is a wrong and mens rea is not a factor to be considered in such a situation. This however could possibly be a mitigating factor in the issue relating to quantum. B C

As there are no creditable defences raised by the defendants, this court hereby finds that the plaintiff was falsely imprisoned from 31 October 1991 to 5 February 1993 and allows the plaintiff's claim in prayer (1) of his statement of claim for a declaration that the extended detention order was null and void. D

On the issue of damages, the plaintiff claims as follows:

> Damages for false imprisonment at the Kamunting Detention Centre, Taiping from 31 October 1991 until 5 February 1993. E

In his testimony before this court, the plaintiff stated that he was a trained aircraft technician attached to the Royal Malaysian Air Force (RMAF) earning a sum of RM1,103. He was however dismissed from the RMAF before he was detained under the initial detention order. Subsequent to his release from the detention on 5 February 1993, he was engaged as an odd-job worker until one and a half years later when he secured his present permanent employment with an initial salary of RM2,500. This testimony is obviously tendered with the view of claiming for loss of earnings during the period of his unlawful confinement. Such a claim, being special damages, must be specifically proved (see *Zainuddin v Liew Pak Fun & Anor* [1962] MLJ 247). F G

In this case however, there is no evidence to indicate that it was the defendants' acts that resulted in the plaintiff's loss of his previous employment. As the plaintiff himself admitted, he was already dismissed from the RMAF before his detention. Thus at the time of his detention by the defendants, he was unemployed. Being unemployed before his detention, there is no evidence to prove that he suffered any specific pecuniary loss in salary resulting from his detention. H

The plaintiff then attempted to explain that he was dismissed while he was under custody prior to the initial detention order. This deprived him of an opportunity to defend his dismissal from the RMAF. In such a situation, there is more reason for the plaintiff's claim for loss of earnings not to be directed at the defendants. He should make his claim against the authority or authorities that brought him into custody and restricted his I

movements at that material time. There is no evidence to prove that the defendants were the ones who were responsible for detaining him prior to the initial detention order. Even if it was based on the initial detention order, the plaintiff has no ground of succeeding because this initial order was not unlawful.

Under special damages therefore, this court makes no award due to the plaintiff's failure to plead for the same as well as on lack of justification.

Though the plaintiff suffered no physical injury during the period of false imprisonment, En Karpal Singh however submits that aggravated damages should be awarded to the plaintiff. Aggravated damages is defined by Lord Diplock in *Broome v Cassell & Co* [1972] AC 1027 at p 1124 as follows:

> Compensation for the injured feelings of the plaintiff where his sense of injury resulting from the wrongful physical act is justifiably heightened by the manner in which or motive for which the defendant did it.

Though this may be awarded to compensate the plaintiff's injured feelings arising out of the defendants' tortious act, there must be justification that it was heightened by the manner or motive of the defendants in doing it. In assessing whether to grant such an award, all circumstances of the case must be taken into account, and one crucial factor is the character of the plaintiff (see *Ansell v Thomas* (1974) Crim LR 31).

Judging from the facts of this case, there was no mala fides on the part of the honourable deputy minister in issuing the unlawful extension detention order. The only error that caused its invalidation may have been an oversight on the part of the honourable deputy minister. Immediately, upon realizing this error, the extension detention order was cancelled and the plaintiff released henceforth. Under these circumstances, surely the injured feelings of the plaintiff could not be said to have been heightened by such bona fide deeds of the defendants. Further, the plaintiff's character is also questionable. He was alleged to have traded our nation's security defences to another country for self gratification. Such treasonable acts certainly do not warrant any award of aggravated damages.

False imprisonment is actionable per se and no actual damage needs to be proved. In deciding the quantum for this, the entire facts of this case must be considered. As stated previously, there was no malice on the part of the second defendant in executing the extension order. It was done in good faith, and the error in the extension order, at most was caused by an oversight. Immediately upon realizing this, the extension order was cancelled and the plaintiff was set at liberty. One should consider this against the grounds for the plaintiff's detention as disclosed in the initial detention order. He was accused of selling the country's secret and attempting to recruit spies. These activities are certainly against national interest, and the plaintiff can be charged for high treason where the penalty, if found guilty is death. Because of an error in the procedure, he was set free, much earlier than he would have. Instead of resting his good fortune, he chose to turn against the government claiming damages on a technical error. Such action is deplorable, and to display its utmost displeasure and revulsion

towards the plaintiff's claim, this court hereby awards a sum of RM1 as nominal damages to the plaintiff.

Further, there should also be no order as to costs and interest as claimed.

Nominal damages awarded.

Reported by T Vimalavathy